

AMENDED IN SENATE AUGUST 4, 2010

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY MAY 3, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1726

Introduced by Assembly Member Swanson

February 3, 2010

An act to amend ~~Sections 1363.03 and 1363.05 of Section 1363.05 of, and to amend, repeal, and add Section 1363.03 of,~~ the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1726, as amended, Swanson. Common interest developments: ballots: quorums.

The Davis-Stirling Common Interest Development Act governs the establishment and management of common interest developments. These provisions require that a common interest development be managed by an association and that elections related to the governance or administration of the common interest development conform to specified requirements, including the establishment of a quorum. Existing law provides for votes on specified matters to be held by secret ballot and requires the ballots to be sent, with 2 preaddressed envelopes, to each member of the association, in accordance with the model used

by California counties for ensuring confidentiality of “vote by mail” ballots.

This bill would clarify that the ballots are mailed in accordance with the model used by California counties for ensuring confidentiality of “voter absentee” ballots, and would specify that each ballot be placed into an inner envelope that is sealed and then placed into an outside mailing envelope addressed to the inspector for the election.

This bill, *until January 1, 2014*, would provide that, notwithstanding governing documents to the contrary and except for associations whose governing documents provide for a reduced quorum for ~~2nd or subsequent elections~~ *a 2nd election utilizing the same ballot*, as provided, the quorum required for purposes of a ~~2nd or subsequent~~ election of directors would be ~~33%~~ *40%* of the association’s voting power, as specified. *The bill would also provide that if an election of directors could not be held due to the failure to obtain a quorum, as specified above, the quorum required for additional elections would be 33%.* This bill would require that these provisions be disclosed in the members’ election materials mailed to the members, including what the quorum for a ~~2nd or subsequent~~ *additional* election of directors will be if there is a failure to obtain a quorum in the initial election. This bill would also provide that these provisions do not apply to any election other than an election of directors. *The bill would authorize associations to continue using the quorum requirements for an election of directors in the current governing documents, as provided.*

The Common Interest Development Open Meeting Act provides that any member of the governing association of a common interest development may attend meetings of the board of directors of the association, except as specified.

This bill would allow the board of directors to participate in a meeting through the use of conference telephone or electronic video screen, if all participating board members are able to hear one another and members of the association speaking before the board.

This bill would also make technical, clarifying changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1363.03 of the Civil Code is amended to read:

1363.03. (a) An association shall adopt rules, in accordance with the procedures prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the association, is responsible for that content.

(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board of directors and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents.

(4) A nomination or election procedure shall not be deemed reasonable if it disallows any member of the association from nominating himself or herself for election to the board of directors.

(5) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

(6) Specify a method of selecting one or three independent third parties as inspector, or inspectors, of election utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

1 (7) Allow the inspector, or inspectors, to appoint and oversee
2 additional persons to verify signatures and to count and tabulate
3 votes as the inspector or inspectors deem appropriate, provided
4 that the persons are independent third parties.

5 (b) Notwithstanding any other law or provision of the governing
6 documents, elections regarding assessments legally requiring a
7 vote, election and removal of members of the association board
8 of directors, amendments to the governing documents, or the grant
9 of exclusive use of common area property pursuant to Section
10 1363.07 shall be held by secret ballot in accordance with the
11 procedures set forth in this section. A quorum shall be required
12 only if so stated in the governing documents of the association or
13 other provisions of law. If a quorum is required by the governing
14 documents, each outside mailing envelope completed pursuant to
15 subdivision (f) received by the inspector of elections shall be
16 treated as a member present at a meeting for purposes of
17 establishing a quorum. An association shall allow for cumulative
18 voting using the secret ballot procedures provided in this section,
19 if cumulative voting is provided for in the governing documents.

20 (c) (1) The association shall select an independent third party
21 or parties as an inspector of election. The number of inspectors of
22 election shall be one or three.

23 (2) For the purposes of this section, an independent third party
24 includes, but is not limited to, a volunteer poll worker with the
25 county registrar of voters, a licensee of the California Board of
26 Accountancy, or a notary public. An independent third party may
27 be a member of the association, but may not be a member of the
28 board of directors or a candidate for the board of directors or related
29 to a member of the board of directors or a candidate for the board
30 of directors. An independent third party may not be a person,
31 business entity, or subdivision of a business entity that is currently
32 employed by or under contract with the association for any
33 compensable services unless expressly authorized by rules of the
34 association adopted pursuant to paragraph (6) of subdivision (a).

35 (3) The inspector or inspectors of election shall do all of the
36 following:

37 (A) Determine the number of memberships entitled to vote and
38 the voting power of each.

39 (B) Determine the authenticity, validity, and effect of proxies,
40 if any.

1 (C) Receive ballots.

2 (D) Hear and determine all challenges and questions in any way
3 arising out of or in connection with the right to vote.

4 (E) Count and tabulate all votes.

5 (F) Determine when the polls shall close, consistent with the
6 governing documents.

7 (G) Determine the tabulated results of the election.

8 (H) Perform any acts as may be proper to conduct the election
9 with fairness to all members in accordance with this section, the
10 Corporations Code, and all applicable rules of the association
11 regarding the conduct of the election that are not in conflict with
12 this section.

13 (4) An inspector of election shall perform his or her duties
14 impartially, in good faith, to the best of his or her ability, and as
15 expeditiously as is practical. If there are three inspectors of election,
16 the decision or act of a majority shall be effective in all respects
17 as the decision or act of all. Any report made by the inspector or
18 inspectors of election is prima facie evidence of the facts stated in
19 the report.

20 (d) For purposes of this section, the following definitions shall
21 apply:

22 (1) "Proxy" means a written authorization signed by a member
23 or the authorized representative of the member that gives another
24 member or members the power to vote on behalf of that member.

25 (2) "Sign or signed" means the placing of the member's name
26 on the proxy (whether by manual signature, typewriting, telegraphic
27 transmission, or otherwise) by the member or authorized
28 representative of the member.

29 (e) Proxies shall not be construed or used in lieu of a ballot. An
30 association may use proxies if permitted or required by the bylaws
31 of the association and if those proxies meet the requirements of
32 this article, other laws, and the association's governing documents,
33 but the association shall not be required to prepare or distribute
34 proxies pursuant to this section. Any instruction given in a proxy
35 issued for an election that directs the manner in which the proxy
36 holder is to cast the vote shall be set forth on a separate page of
37 the proxy that can be detached and given to the proxy holder to
38 retain. The proxy holder shall cast the member's vote by secret
39 ballot. The proxy may be revoked by the member prior to the

1 receipt of the ballot by the inspector of elections as described in
2 Section 7613 of the Corporations Code.

3 (f) Ballots and two preaddressed envelopes with instructions
4 on how to return ballots shall be mailed by first-class mail or
5 delivered by the association to every member not less than 30 days
6 prior to the deadline for voting. In order to preserve confidentiality,
7 a voter may not be identified by name, address, or lot, parcel, or
8 unit number on the ballot. The association shall use as a model
9 those procedures used by California counties for ensuring
10 confidentiality of voter absentee ballots, including all of the
11 following:

12 (1) The ballot itself is not signed by the voter, but is inserted
13 into an inner envelope that is sealed. The envelope is inserted into
14 an outside mailing envelope that is sealed. In the upper left-hand
15 corner of the outside mailing envelope, the voter shall indicate his
16 or her name and the address or separate interest identifier that
17 entitles him or her to vote.

18 (2) The outside mailing envelope is addressed to the inspector
19 or inspectors of election, who will be tallying the votes. The
20 envelope may be mailed or delivered by hand to a location
21 specified by the inspector or inspectors of election. The member
22 may request a receipt for delivery.

23 (g) All votes shall be counted and tabulated by the inspector or
24 inspectors of election or his or her designee in public at a properly
25 noticed open meeting of the board of directors or members. Any
26 candidate or other member of the association may witness the
27 counting and tabulation of the votes. No person, including a
28 member of the association or an employee of the management
29 company, shall open or otherwise review any ballot prior to the
30 time and place at which the ballots are counted and tabulated. The
31 inspector of election, or his or her designee, may verify the
32 member's information and signature on the outside mailing
33 envelope prior to the meeting at which ballots are tabulated. Once
34 a secret ballot is received by the inspector of elections, it shall be
35 irrevocable.

36 (h) The tabulated results of the election shall be promptly
37 reported to the board of directors of the association and shall be
38 recorded in the minutes of the next meeting of the board of
39 directors and shall be available for review by members of the
40 association. Within 15 days of the election, the board shall

1 publicize the tabulated results of the election in a communication
2 directed to all members.

3 (i) The sealed ballots at all times shall be in the custody of the
4 inspector or inspectors of election or at a location designated by
5 the inspector or inspectors until after the tabulation of the vote,
6 and until the time allowed by Section 7527 of the Corporations
7 Code for challenging the election has expired, at which time
8 custody shall be transferred to the association. If there is a recount
9 or other challenge to the election process, the inspector or
10 inspectors of election shall, upon written request, make the ballots
11 available for inspection and review by an association member or
12 his or her authorized representative. Any recount shall be conducted
13 in a manner that preserves the confidentiality of the vote.

14 (j) After the transfer of the ballots to the association, the ballots
15 shall be stored by the association in a secure place for no less than
16 one year after the date of the election.

17 (k) Notwithstanding any other provision of law, the rules
18 adopted pursuant to this section may provide for the nomination
19 of candidates from the floor of membership meetings or nomination
20 by any other manner. Those rules may permit write-in candidates
21 for ballots.

22 (l) Except for the meeting to count the votes required in
23 subdivision (f), an election may be conducted entirely by mail
24 unless otherwise specified in the governing documents.

25 (m) The provisions of this section apply to both incorporated
26 and unincorporated associations, notwithstanding any contrary
27 provision of the governing documents.

28 (n) The procedures set forth in this section shall apply to votes
29 cast directly by the membership, but do not apply to votes cast by
30 delegates or other elected representatives.

31 (o) In the event of a conflict between this section and the
32 provisions of the Nonprofit Mutual Benefit Corporation Law (Part
33 3 (commencing with Section 7110) of Division 2 of Title 1 of the
34 Corporations Code) relating to elections, the provisions of this
35 section shall prevail.

36 (p) (1) Notwithstanding governing documents to the contrary
37 and except for associations whose governing documents provide
38 for a reduced quorum for ~~second or subsequent elections~~ *a second*
39 *election of directors utilizing the same ballot*, if an election of
40 directors could not be held due to the failure to obtain a quorum,

1 the quorum required for purposes of a second or subsequent
2 election of directors shall be 33 40 percent of the association's
3 voting power. In those cases in which the governing documents
4 provide for a reduced quorum for second or subsequent elections,
5 the quorum provisions of the governing documents shall control.

6 (2) *Notwithstanding governing documents to the contrary and*
7 *except for associations whose governing documents provide for a*
8 *reduced quorum for additional elections of directors utilizing the*
9 *same ballot, if an election of directors could not be held due to the*
10 *failure to obtain a quorum pursuant to paragraph (1), the quorum*
11 *required for purposes of the additional elections shall be 33 percent*
12 *of the association's voting power.*

13 (3) *In those cases in which the governing documents provide*
14 *for a reduced quorum for second or additional elections of*
15 *directors utilizing the same ballot, the quorum provisions of the*
16 *governing documents shall control.*

17 (2)

18 (4) *The association shall disclose in the members' election*
19 *materials that are mailed to the members what the quorum for a*
20 *second or subsequent additional election of directors utilizing the*
21 *same ballot will be if the initial election cannot be held due to the*
22 *failure to obtain a quorum.*

23 (3)

24 (5) *The provisions of this subdivision shall not apply to any*
25 *election other than an election of directors.*

26 (6) *An association may elect to continue using the current*
27 *governing documents' quorum requirements for an election of*
28 *directors through either of the following actions:*

29 (A) *If the association obtains the signatures of more than 5*
30 *percent of the voting power of the association on a petition to*
31 *maintain the use of the current governing documents' quorum*
32 *requirements for an election of directors, the board shall place a*
33 *referendum on the ballot for the next election. If the referendum*
34 *receives a majority of votes cast, the association shall use the*
35 *current governing documents' quorum requirements for an election*
36 *of directors, until such time as the governing documents are*
37 *amended.*

38 (B) *If the board votes affirmatively to maintain the use of the*
39 *current governing documents' quorum requirements.*

1 (q) *This section shall remain in effect only until January 1, 2014,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2014, deletes or extends that date.*

4 SEC. 2. *Section 1363.03 is added to the Civil Code, to read:*

5 1363.03. (a) *An association shall adopt rules, in accordance*
6 *with the procedures prescribed by Article 4 (commencing with*
7 *Section 1357.100) of Chapter 2, that do all of the following:*

8 (1) *Ensure that if any candidate or member advocating a point*
9 *of view is provided access to association media, newsletters, or*
10 *Internet Web sites during a campaign, for purposes that are*
11 *reasonably related to that election, equal access shall be provided*
12 *to all candidates and members advocating a point of view,*
13 *including those not endorsed by the board, for purposes that are*
14 *reasonably related to the election. The association shall not edit*
15 *or redact any content from these communications, but may include*
16 *a statement specifying that the candidate or member, and not the*
17 *association, is responsible for that content.*

18 (2) *Ensure access to the common area meeting space, if any*
19 *exists, during a campaign, at no cost, to all candidates, including*
20 *those who are not incumbents, and to all members advocating a*
21 *point of view, including those not endorsed by the board, for*
22 *purposes reasonably related to the election.*

23 (3) *Specify the qualifications for candidates for the board of*
24 *directors and any other elected position, and procedures for the*
25 *nomination of candidates, consistent with the governing documents.*

26 (4) *A nomination or election procedure shall not be deemed*
27 *reasonable if it disallows any member of the association from*
28 *nominating himself or herself for election to the board of directors.*

29 (5) *Specify the qualifications for voting, the voting power of*
30 *each membership, the authenticity, validity, and effect of proxies,*
31 *and the voting period for elections, including the times at which*
32 *polls will open and close, consistent with the governing documents.*

33 (6) *Specify a method of selecting one or three independent third*
34 *parties as inspector, or inspectors, of election utilizing one of the*
35 *following methods:*

36 (A) *Appointment of the inspector or inspectors by the board.*

37 (B) *Election of the inspector or inspectors by the members of*
38 *the association.*

39 (C) *Any other method for selecting the inspector or inspectors.*

1 (7) Allow the inspector, or inspectors, to appoint and oversee
2 additional persons to verify signatures and to count and tabulate
3 votes as the inspector or inspectors deem appropriate, provided
4 that the persons are independent third parties.

5 (b) Notwithstanding any other law or provision of the governing
6 documents, elections regarding assessments legally requiring a
7 vote, election and removal of members of the association board
8 of directors, amendments to the governing documents, or the grant
9 of exclusive use of common area property pursuant to Section
10 1363.07 shall be held by secret ballot in accordance with the
11 procedures set forth in this section. A quorum shall be required
12 only if so stated in the governing documents of the association or
13 other provisions of law. If a quorum is required by the governing
14 documents, each outside mailing envelope completed pursuant to
15 subdivision (f) received by the inspector of elections shall be
16 treated as a member present at a meeting for purposes of
17 establishing a quorum. An association shall allow for cumulative
18 voting using the secret ballot procedures provided in this section,
19 if cumulative voting is provided for in the governing documents.

20 (c) (1) The association shall select an independent third party
21 or parties as an inspector of election. The number of inspectors
22 of election shall be one or three.

23 (2) For the purposes of this section, an independent third party
24 includes, but is not limited to, a volunteer poll worker with the
25 county registrar of voters, a licensee of the California Board of
26 Accountancy, or a notary public. An independent third party may
27 be a member of the association, but may not be a member of the
28 board of directors or a candidate for the board of directors or
29 related to a member of the board of directors or a candidate for
30 the board of directors. An independent third party may not be a
31 person, business entity, or subdivision of a business entity that is
32 currently employed by or under contract with the association for
33 any compensable services unless expressly authorized by rules of
34 the association adopted pursuant to paragraph (6) of subdivision
35 (a).

36 (3) The inspector or inspectors of election shall do all of the
37 following:

38 (A) Determine the number of memberships entitled to vote and
39 the voting power of each.

1 (B) Determine the authenticity, validity, and effect of proxies,
2 if any.

3 (C) Receive ballots.

4 (D) Hear and determine all challenges and questions in any
5 way arising out of or in connection with the right to vote.

6 (E) Count and tabulate all votes.

7 (F) Determine when the polls shall close, consistent with the
8 governing documents.

9 (G) Determine the tabulated results of the election.

10 (H) Perform any acts as may be proper to conduct the election
11 with fairness to all members in accordance with this section, the
12 Corporations Code, and all applicable rules of the association
13 regarding the conduct of the election that are not in conflict with
14 this section.

15 (4) An inspector of election shall perform his or her duties
16 impartially, in good faith, to the best of his or her ability, and as
17 expeditiously as is practical. If there are three inspectors of
18 election, the decision or act of a majority shall be effective in all
19 respects as the decision or act of all. Any report made by the
20 inspector or inspectors of election is prima facie evidence of the
21 facts stated in the report.

22 (d) For purposes of this section, the following definitions shall
23 apply:

24 (1) "Proxy" means a written authorization signed by a member
25 or the authorized representative of the member that gives another
26 member or members the power to vote on behalf of that member.

27 (2) "Sign or signed" means the placing of the member's name
28 on the proxy (whether by manual signature, typewriting,
29 telegraphic transmission, or otherwise) by the member or
30 authorized representative of the member.

31 (e) Proxies shall not be construed or used in lieu of a ballot.
32 An association may use proxies if permitted or required by the
33 bylaws of the association and if those proxies meet the
34 requirements of this article, other laws, and the association's
35 governing documents, but the association shall not be required to
36 prepare or distribute proxies pursuant to this section. Any
37 instruction given in a proxy issued for an election that directs the
38 manner in which the proxy holder is to cast the vote shall be set
39 forth on a separate page of the proxy that can be detached and
40 given to the proxy holder to retain. The proxy holder shall cast

1 *the member's vote by secret ballot. The proxy may be revoked by*
2 *the member prior to the receipt of the ballot by the inspector of*
3 *elections as described in Section 7613 of the Corporations Code.*

4 *(f) Ballots and two preaddressed envelopes with instructions*
5 *on how to return ballots shall be mailed by first-class mail or*
6 *delivered by the association to every member not less than 30 days*
7 *prior to the deadline for voting. In order to preserve confidentiality,*
8 *a voter may not be identified by name, address, or lot, parcel, or*
9 *unit number on the ballot. The association shall use as a model*
10 *those procedures used by California counties for ensuring*
11 *confidentiality of voter absentee ballots, including all of the*
12 *following:*

13 *(1) The ballot itself is not signed by the voter, but is inserted*
14 *into an inner envelope that is sealed. The envelope is inserted into*
15 *an outside mailing envelope that is sealed. In the upper left-hand*
16 *corner of the outside mailing envelope, the voter shall indicate his*
17 *or her name and the address or separate interest identifier that*
18 *entitles him or her to vote.*

19 *(2) The outside mailing envelope is addressed to the inspector*
20 *or inspectors of election, who will be tallying the votes. The*
21 *envelope may be mailed or delivered by hand to a location*
22 *specified by the inspector or inspectors of election. The member*
23 *may request a receipt for delivery.*

24 *(g) All votes shall be counted and tabulated by the inspector or*
25 *inspectors of election or his or her designee in public at a properly*
26 *noticed open meeting of the board of directors or members. Any*
27 *candidate or other member of the association may witness the*
28 *counting and tabulation of the votes. No person, including a*
29 *member of the association or an employee of the management*
30 *company, shall open or otherwise review any ballot prior to the*
31 *time and place at which the ballots are counted and tabulated.*
32 *The inspector of election, or his or her designee, may verify the*
33 *member's information and signature on the outside mailing*
34 *envelope prior to the meeting at which ballots are tabulated. Once*
35 *a secret ballot is received by the inspector of elections, it shall be*
36 *irrevocable.*

37 *(h) The tabulated results of the election shall be promptly*
38 *reported to the board of directors of the association and shall be*
39 *recorded in the minutes of the next meeting of the board of*
40 *directors and shall be available for review by members of the*

1 association. Within 15 days of the election, the board shall
2 publicize the tabulated results of the election in a communication
3 directed to all members.

4 (i) The sealed ballots at all times shall be in the custody of the
5 inspector or inspectors of election or at a location designated by
6 the inspector or inspectors until after the tabulation of the vote,
7 and until the time allowed by Section 7527 of the Corporations
8 Code for challenging the election has expired, at which time
9 custody shall be transferred to the association. If there is a recount
10 or other challenge to the election process, the inspector or
11 inspectors of election shall, upon written request, make the ballots
12 available for inspection and review by an association member or
13 his or her authorized representative. Any recount shall be
14 conducted in a manner that preserves the confidentiality of the
15 vote.

16 (j) After the transfer of the ballots to the association, the ballots
17 shall be stored by the association in a secure place for no less than
18 one year after the date of the election.

19 (k) Notwithstanding any other provision of law, the rules
20 adopted pursuant to this section may provide for the nomination
21 of candidates from the floor of membership meetings or nomination
22 by any other manner. Those rules may permit write-in candidates
23 for ballots.

24 (l) Except for the meeting to count the votes required in
25 subdivision (f), an election may be conducted entirely by mail
26 unless otherwise specified in the governing documents.

27 (m) The provisions of this section apply to both incorporated
28 and unincorporated associations, notwithstanding any contrary
29 provision of the governing documents.

30 (n) The procedures set forth in this section shall apply to votes
31 cast directly by the membership, but do not apply to votes cast by
32 delegates or other elected representatives.

33 (o) In the event of a conflict between this section and the
34 provisions of the Nonprofit Mutual Benefit Corporation Law (Part
35 3 (commencing with Section 7110) of Division 2 of Title 1 of the
36 Corporations Code) relating to elections, the provisions of this
37 section shall prevail.

38 (p) This section shall become operative on January 1, 2014.

39 ~~SEC. 2.~~

40 SEC. 3. Section 1363.05 of the Civil Code is amended to read:

1 1363.05. (a) This section shall be known and may be cited as
2 the Common Interest Development Open Meeting Act.

3 (b) Any member of the association may attend meetings of the
4 board of directors of the association, except when the board
5 adjourns to executive session to consider litigation, matters relating
6 to the formation of contracts with third parties, member discipline,
7 personnel matters, or to meet with a member, upon the member's
8 request, regarding the member's payment of assessments, as
9 specified in Section 1367 or 1367.1. The board of directors of the
10 association shall meet in executive session, if requested by a
11 member who may be subject to a fine, penalty, or other form of
12 discipline, and the member shall be entitled to attend the executive
13 session.

14 (c) Any matter discussed in executive session shall be generally
15 noted in the minutes of the immediately following meeting that is
16 open to the entire membership.

17 (d) The minutes, minutes proposed for adoption that are marked
18 to indicate draft status, or a summary of the minutes, of any
19 meeting of the board of directors of an association, other than an
20 executive session, shall be available to members within 30 days
21 of the meeting. The minutes, proposed minutes, or summary
22 minutes shall be distributed to any member of the association upon
23 request and upon reimbursement of the association's costs for
24 making that distribution.

25 (e) Members of the association shall be notified in writing at
26 the time that the pro forma budget required in Section 1365 is
27 distributed, or at the time of any general mailing to the entire
28 membership of the association, of their right to have copies of the
29 minutes of meetings of the board of directors, and how and where
30 those minutes may be obtained.

31 (f) Unless the time and place of meeting is fixed by the bylaws,
32 or unless the bylaws provide for a longer period of notice, members
33 shall be given notice of the time and place of a meeting as defined
34 in subdivision (j), except for an emergency meeting, at least four
35 days prior to the meeting. Notice shall be given by posting the
36 notice in a prominent place or places within the common area and
37 by mail to any owner who had requested notification of board
38 meetings by mail, at the address requested by the owner. Notice
39 may also be given, by mail or delivery of the notice to each unit
40 in the development or by newsletter or similar means of

1 communication. The notice shall contain the agenda for the
2 meeting.

3 (g) An emergency meeting of the board may be called by the
4 president of the association, or by any two members of the
5 governing body other than the president, if there are circumstances
6 that could not have been reasonably foreseen which require
7 immediate attention and possible action by the board, and which
8 of necessity make it impracticable to provide notice as required
9 by this section.

10 (h) The board of directors of the association shall permit any
11 member of the association to speak at any meeting of the
12 association or the board of directors, except for meetings of the
13 board held in executive session. A reasonable time limit for all
14 members of the association to speak to the board of directors or
15 before a meeting of the association shall be established by the
16 board of directors.

17 (i) (1) Except as described in paragraphs (2) to (4), inclusive,
18 the board of directors of the association may not discuss or take
19 action on any item at a nonemergency meeting unless the item was
20 placed on the agenda included in the notice that was posted and
21 distributed pursuant to subdivision (f). This subdivision does not
22 prohibit a resident who is not a member of the board from speaking
23 on issues not on the agenda.

24 (2) Notwithstanding paragraph (1), a member of the board of
25 directors, a managing agent or other agent of the board of directors,
26 or a member of the staff of the board of directors, may do any of
27 the following:

28 (A) Briefly respond to statements made or questions posed by
29 a person speaking at a meeting as described in subdivision (h).

30 (B) Ask a question for clarification, make a brief announcement,
31 or make a brief report on his or her own activities, whether in
32 response to questions posed by a member of the association or
33 based upon his or her own initiative.

34 (3) Notwithstanding paragraph (1), the board of directors or a
35 member of the board of directors, subject to rules or procedures
36 of the board of directors, may do any of the following:

37 (A) Provide a reference to, or provide other resources for factual
38 information to, its managing agent or other agents or staff.

39 (B) Request its managing agent or other agents or staff to report
40 back to the board of directors at a subsequent meeting concerning

1 any matter, or take action to direct its managing agent or other
2 agents or staff to place a matter of business on a future agenda.

3 (C) Direct its managing agent or other agents or staff to perform
4 administrative tasks that are necessary to carry out this subdivision.

5 (4) (A) Notwithstanding paragraph (1), the board of directors
6 may take action on any item of business not appearing on the
7 agenda posted and distributed pursuant to subdivision (f) under
8 any of the following conditions:

9 (i) Upon a determination made by a majority of the board of
10 directors present at the meeting that an emergency situation exists.
11 An emergency situation exists if there are circumstances that could
12 not have been reasonably foreseen by the board, that require
13 immediate attention and possible action by the board, and that, of
14 necessity, make it impracticable to provide notice.

15 (ii) Upon a determination made by the board by a vote of
16 two-thirds of the members present at the meeting, or, if less than
17 two-thirds of total membership of the board is present at the
18 meeting, by a unanimous vote of the members present, that there
19 is a need to take immediate action and that the need for action
20 came to the attention of the board after the agenda was posted and
21 distributed pursuant to subdivision (f).

22 (iii) The item appeared on an agenda that was posted and
23 distributed pursuant to subdivision (f) for a prior meeting of the
24 board of directors that occurred not more than 30 calendar days
25 before the date that action is taken on the item and, at the prior
26 meeting, action on the item was continued to the meeting at which
27 the action is taken.

28 (B) Before discussing any item pursuant to this paragraph, the
29 board of directors shall openly identify the item to the members
30 in attendance at the meeting.

31 (5) Members of the board of directors may participate in a
32 meeting through use of a conference telephone or electronic video
33 screen communication. Participation in a meeting through use of
34 a conference telephone or electronic video screen communication
35 constitutes presence in person at that meeting if all board members
36 participating in the meeting are able to hear one another and
37 members of the association speaking on matters before the board.

38 (j) As used in this section, “meeting” means any congregation
39 of a majority of the members of the board at the same time and

- 1 place to hear, discuss, or deliberate upon any item of business
- 2 scheduled to be heard by the board.

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